



Department of Justice

STATEMENT OF

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UNITED STATES DEPARTMENT OF JUSTICE**

**BEFORE THE COMMITTEE ON THE
JUDICIARY**

**UNITED STATES HOUSE OF
REPRESENTATIVES**

**AT A HEARING ENTITLED
“OVERSIGHT OF THE BUREAU OF PRISONS”**

PRESENTED FEBRUARY 3, 2022

Good morning Chairwoman Jackson Lee, Ranking Member Biggs, and Members of the Subcommittee. You have asked me to come before you today to discuss a variety of topics, including the Bureau of Prisons' (Bureau's or BOP's) COVID-19 pandemic response and its impact on our operations. As always, I speak today on behalf of the Bureau's 37,000 staff – all of whom are corrections professionals who support the agency's critical law enforcement mission. I have previously announced my plans to retire but have agreed to remain until the Attorney General has named my replacement. Until that time, I remain committed to ensuring that Bureau staff are guided by our core values of respect, integrity, courage, and correctional excellence.

I have been honored to work alongside the finest corrections professionals in the world. I have spent 30 years in the Bureau following my service in the military, starting as a Correctional Officer, moving up through the ranks of Correctional Services to become a Warden, Regional Director, Assistant Director, and now Director. Having served in those multiple roles, I understand the complexities and challenges in fulfilling our agency's mission – particularly during budget constraints, natural disasters, hiring freezes and yes, most recently, a worldwide pandemic. I was appointed to serve as the Bureau's eleventh Director on February 25, 2020, approximately four weeks before the Bureau's first inmate COVID-19 positive case.

As an agency, and throughout the ranks of its dedicated staff, the Bureau continuously works to ensure the safety of staff, inmates, and surrounding communities in 121 active locations spread out throughout the U.S., including Hawaii and Puerto Rico. Our goal is to continue improving the efficiency and effectiveness of our operations and to set new standards in the field of corrections. We are specifically focused on several priority areas:

- Increasing staffing at our correctional institutions nationwide;
- Increasing and incentivizing First Step Act (FSA) program participation;
- Strengthening agency management and operations; and
- Investigating and reducing criminal activity within our agency;

Increasing Staffing at Our Correctional Institutions Nationwide

One of our key priorities is fully staffing our institutions. Hiring and retention of staff remains a priority for the Bureau, as higher staffing levels afford the Bureau the flexibility and stability needed to carry out its mission, including the expansion of programs as required by the First Step Act.

In 2021, the Bureau made a successful push to hire new employees. By June, BOP had filled over 94% of its "Line" Correctional Officer (COs) positions, the highest level in recent years. In October, the Bureau focused hiring on maintaining some of its previous staffing gains, ending 2021 with over 92% of Line CO positions filled. The success of BOP's hiring effort was due to its ability to run targeted recruitment campaigns for specific positions and regions. In 2019, the Bureau contracted with an outside consultant to develop a comprehensive recruitment campaign to fill vacancies. That contract involved: 1) creating a new agency branding campaign that is based on extensive research about public perceptions of the BOP, its mission, and impediments to hiring; 2) improving the messaging and visual appeal of BOP's job postings and website; 3) launching online recruitment events and targeted ad campaigns, including extensive use of social media; and, 4) developing new data analytics capabilities to measure the effectiveness of these efforts. The Bureau now has a national

recruitment coordinator who supervises a staff of 20 individuals who are responsible for recruitment and hiring for positions across the agency.

Currently, the Bureau has an FTE level of 35,161. As of December 2021, about 400 of roughly 1100 CO vacancies were in seven facilities – FCC Beaumont, FCI Berlin, FCC Florence, FCI Herlong, FCI Mendota, USP Thomson, and FCC Yazoo City. These facilities are chronically difficult to staff for a variety of reasons due to competition from state and local organizations who pay a higher salary or due to the rural location of the facility. The Bureau is taking steps to increase staffing at these facilities and to explore additional avenues for doing so. For example, in summer 2021, we secured approval from the Office of Personnel Management (OPM) to offer an increased group retention incentive at USP Thomson. Since the Bureau began offering recruitment, relocation, and retention incentives at Thomson, the CO fill rate increased from 56% to 78%. In addition, BOP plans to provide direct assistance to USP Thomson, FCC Florence, and FCC Yazoo City by announcing National Recruitment Specialist positions at each facility. The specialists will focus on hiring at each of those facilities. Given the recent promising results at Thomson, we will consider the use of additional incentives at other facilities. However, it is important to note that incentives are expensive. For the last quarter of FY21, BOP budgeted \$2.3M for the new 25% group retention incentive at USP Thomson.

We are also pursuing additional strategies to modernize our hiring across the Bureau to give us the flexibility and stability we need to carry out our mission successfully. Our hiring strategies are designed to reduce overreliance on overtime and augmentation when fellow staff with equivalent law enforcement training provide necessary coverage for correctional officer positions. We believe these efforts will have a significant impact on the safety, security, and programming opportunities at our facilities. In particular, staffing is a key component to the Bureau's successful implementation of the FSA. As described in more detail below, the Bureau has sufficient types of programs, but the only way to increase capacity is by hiring additional qualified professionals to deliver these programs.

The Bureau recognizes the need to fully address the causes and potential impacts of our staffing challenges. To identify and analyze these challenges, the agency has solicited and awarded a contract to a consulting firm to assess institutional staffing levels, and use of overtime and augmentation. With this information, the contractor will provide recommended strategies for assessing overtime usage so that the agency may make more informed staffing decisions. Specifically, through this contract, the Bureau will be focusing on several areas: recommendations for a process to calculate staffing levels continuously across Bureau locations and positions; recommendations based on analysis of current staffing incentives, as well as market and industry research to determine the best way to deploy incentives maximizing return on the investment; evaluation of the negative impacts and risks associated with overtime and augmentation usage and mitigation strategies; and how usage of employee assistance programs can be used and their effectiveness based on resiliency outcome metrics (e.g. retention, suicide, safety incidents, absenteeism).

The Bureau is currently using several national recruitment incentives to help bring great candidates on board. A 5% retention incentive was offered to all staff eligible to retire in 2019 to encourage experienced staff to remain with the agency past their eligibility date to help maintain our staffing levels. Additionally, to address our medical staffing challenges, the Bureau recently expanded the coverage of its existing Title 38 special pay authority to include not only psychiatrists, but all employed physicians and dentists. Title 38 pay authority permits the payment of salaries that

significantly exceed the Title 5 pay cap and permits us to compete with other federal agencies with medical personnel, as well as private sector salaries in certain locations.

Staffing is a key component to successful implementation of the First Step Act (FSA). While we have sufficient types of programs, the only way to increase capacity is by hiring additional qualified professionals to deliver these programs. Staff positions allotted under the FSA have already been utilized to expand capacity in female programs, mental health and drug treatment, and career and technical training. We are committed to maximizing the use of FSA funds for position allotments, as authorized, to ensure all interested and eligible inmates are able to benefit from our many programs. The Bureau is committed to maintaining appropriate staffing levels as doing so is critical to the safety and security of federal prisons.

Increasing and incentivizing First Step Act (FSA) Program Participation

The Bureau has prioritized full implementation of the First Step Act (FSA), including most recently the publication of the rule for FSA time credits. The FSA contains comprehensive and complex requirements, and the Bureau thus welcomes the opportunity to clarify the scope and breadth of the Bureau's work in this area, even in the midst of a global pandemic. In addition to modifying various policies relating to compassionate release and elderly offender home confinement very shortly after the passage of the FSA, the Bureau began working with the Department on the development of the new risk and needs assessment system, supporting the NIJ consultants who developed what is now the approved Prisoner Assessment Tool Targeting Risk and Need (PATTERN).

During the same timeframe, the Bureau recomputed the sentences of over 150,000 inmates to ensure they received good conduct time under the changed law; we updated and provided training for staff regarding restrictions against restraining pregnant and post-partum offenders; we updated policies relating to juvenile confinement, dyslexia screening, secure firearm storage, feminine hygiene products, designations within 500 miles, release planning, and elderly offender home confinement; and we trained staff on the new PATTERN tool once it had been released. We continued our work with the FSA by hosting listening sessions with stakeholders and engaging subject matter experts in the area of needs assessment to help us define and refine our own system. This improved needs assessment system, collectively known as the Standardized Prisoner Assessment for Reduction in Criminality (SPARC-13), was launched in January 2020 when every inmate in BOP custody for more than 28 days was provided with the individualized results of the inmate's risk and needs assessment, and inmates began enrolling in programs designed to address identified needs. This new system included the development of tracking assignments, the addition of new assessment measures, and automation of the process to ensure accuracy and consistency.

The Bureau developed and implemented new FSA policies, including a new Needs Assessment policy and a new Incentives policy after negotiation with the BOP's Union. To address inmate needs identified via SPARC-13, the Bureau's 80-plus Evidence-based Recidivism Reduction (EBRR) programs and Productive Activities (PA) are designed to address the individual needs of each inmate

to mitigate recidivism risk. The most robust of our programs are Cognitive Behavioral Therapy (CBT) interventions addressing mental health and substance use disorders, anger management, and criminal cognitions. Educational programs range from adult basic education through high school equivalency to post-secondary college courses. They also include approximately 200 Career and Technical Education programs widely available, and reentry-focused programs, such as parenting, offered at all sites. Because the agency has such a large menu of programs covering a variety of need areas, the Bureau has put forth considerable effort to build adequate capacity for these programs, and has been able to expand access to additional inmates by hiring staff into the positions authorized by Congress under the FSA. We identified gaps in services for women and were able to enhance our offerings. We now offer more than 25 programs designed specifically for women in addition to our gender-neutral offerings, and we created new institution-based positions to deliver these important programs. We also offer specialized programming for veterans or persons with disabilities.

Other innovations are underway to enhance programs. These include modernizing the inmate education platform to allow inmates to use tablets to supplement program delivery, so that inmates have opportunities for self-paced and monitored study even when classrooms are unavailable. The Bureau has also improved recruitment of skilled volunteers. It is exploring opportunities to provide inmates with identification cards that will be more compatible with state requirements under the Real ID Act, which will assist inmates in navigating their return to the community with greater ease. We have also engaged consultancy services to enhance recruitment efforts for psychology staff members, many of whom deliver key programs and services.

While the pandemic certainly impacted the delivery of FSA programs in institutions, critical services such as mental health care, crisis intervention, and religious services have continued unabated. As we have learned more about virus mitigation strategies and continue the process of vaccinating staff and inmates, we have been able to resume much of our programming. More than 75,000 inmates are currently participating in FSA programs despite social distancing requirements and other limitations imposed due to COVID-19.

We have begun awarding inmates FSA earned time credits for successful participation in FSA programs and moving eligible inmates to supervised release or pre-release custody. These credits are governed by a new regulation that the Bureau issued in January 2022. Working closely with other Department of Justice components, we are exercising our discretion to apply time credits towards supervised release for the sentences of over 4,900 inmates and anticipate moving over 2,500 inmates to Home Confinement or a Residential Reentry Center based on the published final rule governing the awarding of FSA earned time credits.

Additionally, while the Bureau issues many different forms of guidance as part of our FSA implementation, we have also prioritized the negotiation of FSA-related policies that require Union negotiations. To date, 12 FSA-related policies have been issued including those addressing inmate needs assessments and assisting inmates in obtaining identification. These efforts contribute to the

timely and successful implementation of the FSA and its goals of increasing opportunities for self-improvement and reducing risks of recidivism.

In response to the recommendations of the Independent Review Committee to the Attorney General, and recognizing the need to show the valuable impact our programs have on the lives of inmates and their communities, we have funded partnerships with credentialed researchers from the academic community to evaluate our programs. Similarly, we are working with the National Institute of Justice to fund additional program evaluation research. All of the Bureau's programs are grounded in research literature and rely on widely accepted practices, such as the cognitive behavioral model of treatment. These evaluations will provide specific outcomes for the federal prison population and, in some cases, update previous studies.

Staffing is a key component to the Bureau's successful implementation of the FSA. As described earlier, the Bureau has sufficient types of programs, but the only way to increase the capacity of those programs is by hiring additional qualified professionals to deliver these programs. Staff positions allotted under the FSA have already been used to expand capacity in female programs, mental health and drug treatment, and career and technical training. We are committed to maximizing the use of FSA funds for position allotments, as authorized, to ensure all interested and eligible inmates are able to benefit from our many programs.

Strengthening Agency Management and Operations

COVID-19 Management and Institution Operations

The onset of the COVID-19 pandemic has ushered in a difficult period for the country and the Bureau, including the tragic loss of staff and inmates. Throughout the pandemic, the Bureau has engaged and leveraged all operational components to incorporate lessons learned and identify innovative ways to support agency operations, including the safe delivery of inmate programming.

Pandemic preparedness is an important aspect of operational readiness and planning in the Bureau. The Bureau's management of COVID-19 began in January 2020 with the activation of its existing pandemic plan based on a well-established history of managing and responding to various types of communicable disease outbreaks common in congregate settings. We used our pandemic plan as a springboard for our COVID-19 response planning, where our medical leadership began consulting with relevant experts, including the Centers for Disease Control and Prevention (CDC), the U.S. Public Health Service, the Office of Personnel Management (OPM), and the Office of the Vice President. The Bureau issued guidance on COVID-19 to all Clinical Directors and other relevant Health Services staff six weeks ahead of the presidential declaration of the COVID-19 pandemic, and began implementing modified operations to mitigate potential transmission of the virus.

Drawing on our history of collaboration with the CDC regarding correctional medicine, the Bureau engaged with the CDC to assist in developing guidance specific to the unique nature of correctional environments. The CDC then published its *Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* on March 23, 2020. Since that time, the Bureau has continued to provide input into CDC guidance when those recommendations are updated based on new scientific data and information. We have continued this strong collaboration throughout the pandemic and have invited the CDC and local public health officials into our facilities to evaluate our work. The CDC has reviewed and praised our planning and implementation in the wake of this evolving pandemic.

In an effort to be transparent about our plans, operations, and statistics, the Bureau has published (online) one of the most detailed and thorough COVID-19 pandemic resource areas for corrections in relation to infections, testing and vaccination rates. The Bureau has published increasing amounts of data and information on our public website at <https://www.bop.gov/coronavirus/> since the early days of the pandemic. After initially describing our pandemic planning, the resource area has expanded to include infection data per facility and nationally, vaccination doses administered per facility and nationally, and testing data nationally and per facility. As a further commitment to transparency, the Bureau generally updates the statistics on this site daily.

Screening, Quarantine, and Visitation

In the Bureau's initial guidance, we implemented enhanced screening of staff and inmates and social distancing procedures to the greatest extent appropriate within the prison environment. Prisons are not designed for social distancing. Nonetheless, we modified our operations to minimize comingling and group gatherings. We suspended social visiting, tours, and the admission of volunteers to decrease the flow of individuals from the community into the prison, particularly at the height of the pandemic. Understanding the importance of visitation to the inmate population, we significantly increased telephone minutes for the inmates from 300 to 500 minutes on March 13, 2020, and later, on April 8, 2020, in accordance with the CARES Act, made telephone calls free for the inmate population. We also made video-visiting free of charge, which we have available at our female facilities. The impact of this program is clear—telephone minute usage increased by nearly 50% the next day. This program remains in place today.

We also implemented enhanced daily monitoring and established quarantine and medical isolation procedures for inmates. Quarantine units are established for new intakes to an institution, those identified as post-exposure to COVID-19, and for all inmates prior to transfer or release from an institution. We further implemented enhanced modified operations to increase social distancing while continuing to ensure all critical services are delivered. Chaplains, psychologists, and medical staff visit inmates in their housing areas when inmates cannot leave that space for safety reasons. Beginning on April 7, 2020, to maintain the safety of inmates leaving our facilities and the public, we instituted requirements for all inmates due to be released from the Bureau or transferred to a Residential Reentry Center (RRC) or Home Confinement be placed on 14-day quarantine prior to their anticipated release or transfer.

As vaccines became available and CDC Guidance changed, BOP modified its requirements such that all inmates continue to be tested prior to transfer to an RRC or home confinement and those who are not fully vaccinated continue to complete the required quarantine.

Testing

As is taking place in communities across the country, Bureau testing protocols have evolved throughout the course of the COVID-19 pandemic based on testing resource availability and guidance provided by the CDC for Correctional and Detention Facilities. Testing within the Bureau includes commercial RT-PCR testing, as well as point of care testing such as Abbott ID NOW and Abbott Binax Now. By June 2020, the Bureau had deployed 250 Abbott ID NOW testing systems, and adequate testing supplies for their use were procured. We then procured testing kits and services for all Bureau institutions so that they are able to test all new inmate intakes to an institution; all inmates with symptoms of COVID-19; inmates suspected of exposure to a COVID-19 case; and any inmate prior to release or transfer from an institution. As of January 5, 2022, 963,509 total inmate tests have been completed on 202,326 total inmates.

For testing of staff, institutions work with their community health centers and public health entities to locate community testing resources. For those staff unable to locate or utilize community resources, the Bureau has contracted with a national lab service to provide staff testing.

Personal Protective Equipment and Other Protective Supplies (PPE)

The Bureau has a longstanding practice of maintaining a supply of Personal Protective Equipment (PPE) and other emergency-related equipment. With the onset of the pandemic, the Bureau had approximately 34 million pieces of PPE on hand. To maintain an adequate supply, we proactively pursued available markets and use of emergency purchasing authorities to acquire and maintain a robust stockpile of PPE. Each institution maintains a detailed inventory of PPE which is also monitored by our Emergency Operations Center in headquarters, to include N95 respirators, surgical masks, cloth face coverings, goggles/face shields, gloves, gowns, hand sanitizer, and cleaning supplies. In addition, each of our six regions maintains a regional stockpile, where items can be shipped in one day to an institution that needs additional PPE. Throughout the pandemic, all institutions have had ample PPE, cleaning products, disinfectant, and soap available and the Bureau continues to follow CDC guidance on face coverings. The Bureau's headquarters procurement staff issue solicitations to replenish supplies as needed.

Inmate Movement

Early in the pandemic, the BOP sought to significantly limit movement in and out of our federal prisons. On average, during the early peak of the pandemic in 2020, the Bureau maintained a 98% decrease in movement compared to the prior year. While there was often criticism of the limited movement that did occur, such movement was and is necessary to carry out required tasks such as for court-ordered forensic studies, federal writs, execution of Interstate Agreements on Detainers, for necessary medical and mental health treatment, and the transfer of inmates to Residential Reentry

Centers (RRCs) or home confinement near the conclusion of their sentences. In addition, because individuals in the community continue to commit crimes, arrests continue to be made, and federal courts continue to adjudicate and sentence offenders. Thus, new admissions to the Bureau from the United States Marshals Service (USMS) continue throughout the pandemic, as legally required. These detainees and sentenced inmates continue to enter our system. We have been and remain obligated to take these individuals from the courts and cannot control when the courts place them into our system. Working closely with the Department of Justice (Department) and the USMS, we initially slowed the entrance of some of these new admissions during the initial height of the pandemic until additional testing capability was acquired. Recognizing that our Minimum and Low security facilities were more adversely affected by COVID-19 due in large part to their open dormitory style housing units, the Bureau also temporarily reduced the target population levels at these types of facilities to allow for more social distancing.

With the advent of vaccination and improved testing, inmate movement throughout the agency has resumed to near pre-pandemic levels, which includes both bus routes and airlifts. The Bureau continues to follow CDC guidelines for testing, quarantining, and isolation to ensure movement is conducted in a safe manner. The BOP currently has specific requirements for transfers between institutions depending upon the institution's current COVID-19 [Operational Level](#), ranging from symptom screen and temperature check to 14 day quarantine for the inmates in-transit.

If institution concerns arise, the Bureau reevaluates movement plans as necessary. The total movement into and inside the agency in 2021 was 99,655 inmates.

Vaccination

The Bureau's response to COVID-19 has mirrored that of the community. With the advent of vaccinations, the agency pursued an aggressive strategy to administer the vaccine in all institutions, in close coordination with the CDC and the Federal Government's Countermeasures Acceleration Group (formerly known as Operation Warp Speed). **On January 28, 2021, the Bureau was presented a certificate of achievement recognizing the agency for leading all jurisdictions and federal entities in its rate of vaccination utilization, having the highest percentage of vaccines administered per doses allocated across all of the United States.** At that time, COVID-19 vaccines had been delivered to staff and inmates at more than half of our correctional facilities across the country. As of January 26, 2022, approximately 80 percent of Bureau staff are fully vaccinated, and 70 percent of inmates are fully vaccinated against COVID-19.

The Bureau continues to offer and encourage both booster and primary vaccine doses to all inmates upon arrival at a Bureau facility and to all staff. We achieved a milestone in the distribution and administration of COVID-19 vaccines, exceeding 288,000 total doses administered, as of January 26, 2022, to staff and inmates. The vast majority of our inmates who test positive are asymptomatic or only mildly ill. The number of hospitalized inmates – those who are significantly ill – is much smaller. The number of hospitalized inmates is on a significant downward trajectory, suggesting that our efforts to minimize new cases are becoming more effective. Detailed Covid-19 data can be found on the

agency's website at www.bop.gov. With regard to staff vaccinations, the BOP is complying with federal directives.

Home Confinement and Compassionate Release

A key component of COVID-19 management is mitigating the risk of disease complications for vulnerable inmates. After issuance of the CARES Act, the Bureau began screening the entire inmate population for vulnerable and eligible inmates appropriate for transfer to a Residential Reentry Center (RRC) or Home Confinement. Based on the March 26, 2020 and April 3, 2020 guidance issued by Attorney General Barr, the Bureau began and continues to migrate eligible inmates to Home Confinement. I am pleased to report that since March 26, 2020, the Bureau has transferred more than 37,000 inmates to community custody, with more than 9,000 transferred directly pursuant to the authority granted by the CARES Act. Review of medically vulnerable inmates for potential placement in home confinement remains ongoing and will continue for the duration of the pandemic.

While we are always dedicated to the protection of our inmates' health and safety, we must also consider public safety, and the risk that an inmate would pose in the community when considering transfer to home confinement. Similarly, we cannot transfer inmates who do not have safe or appropriate housing for themselves (e.g., returning an inmate to a household with a domestic violence history or a sex offender to a community or household with potential victims) or whose medical condition was well-considered by the judiciary prior to and during sentencing. Thus, public safety factors and judicial intent must be considered, and these decisions are made using sound correctional judgement and our many years of experience overseeing such transfers.

As the Committee is aware, the Department's Office of Legal Counsel recently issued an opinion indicating that the Bureau may use its preexisting authorities and discretion to permit prisoners granted CARES Act Home Confinement to continue such placements after declaration of the end of the COVID-19 Emergency. The Department of Justice is preparing regulations to implement this decision.

In managing COVID-19, the Bureau has also utilized other authorities such as compassionate release. Specifically, the Bureau has used its policy-based process for evaluating compassionate release requests, to ensure that every offender's individual and unique "extraordinary and compelling circumstances" are fully considered. While the Bureau's decision-making in this area is often criticized or second-guessed, the Bureau adheres closely to the authority of the statute and considers severe conditions such as a terminal illness or debilitating medical condition when considering requests. The Department of Justice has agreed that, in certain circumstances, increased risk of severe illness from COVID-19 may establish extraordinary and compelling reasons that would permit a sentence reduction if the district court determines that other statutory requirements are met. BOP has also made vaccines, which can greatly reduce the risk of severe COVID-19, available to all BOP inmates. Nevertheless, in all cases where the inmate files a motion for compassionate release in federal court, a decision to grant a compassionate release is a decision made by the court, not the

Bureau. Notwithstanding the government's actions in this area, the First Step Act of 2018 paved the way for an inmate to file directly with the sentencing court, after the inmate has fully exhausted the internal appeals process, or 30 days after the warden received the inmate's compassionate release request. Since the enactment of the FSA, we are aware of 4,025 compassionate releases regardless of the tens of thousands which have been sought. Since the passage of the CARES Act, 3,851 inmates have been released via compassionate release. The Bureau cannot track inmate-filed motions, as the Bureau is not a party to those cases. The United States Sentencing Commission's most recent (September 2021) report on compassionate release cases found that of 12,926 motions filed in 2020, 2,611 (20.2%) were granted. The report also found that of 7,639 motions filed in 2021, 997 (13.1%) were granted.

The Elderly Offender Home Detention Program was reauthorized by the FSA, and it allows certain elderly federal inmates to seek placement on home confinement before the expiration of their prison sentence. Since passage of the FSA, the Bureau has approved 1,177 inmates to home confinement under this program.

Normalizing Operations

The Bureau is taking steps to normalize operations in stages as safety and security permit, including inmate movement, food service, and ramping up programing in all facilities. The Bureau's modified operational plan and matrix, developed with CDC, is helping to ensure that Bureau facilities operate safely during the COVID-19 pandemic, and make operational decisions in a data-driven manner consistent across all institutions. And while it has been an extraordinary period with many challenges, we continue to look forward and advance our priorities.

Strengthening Management of Staff and Resources

A key priority area that the Bureau is squarely focused on is our work with the Government Accountability Office (GAO) related to its audits of agency operations and in turn, strengthening management of staff and resources. In an effort to accelerate this work, I established a cross-agency Task Force to work towards resolving all open GAO recommendations in a timely manner. The Task Force's mission also includes assessing current business practices that have caused the Bureau to experience challenges in responding to and preparing for external audits and reviews; making suggestions to improve our process for responding to external audits; and making recommendations to leadership regarding strategic management approaches.

The Task Force was initially created to focus on fourteen open GAO recommendations from three audits: Actions Needed to Evaluate Program Effectiveness (FPI), Improved Planning Would Help BOP Evaluate and Manage its Portfolio of Drug Education and Treatment Programs, Better Planning and Evaluation Needed to Understand and Control Rising Inmate Health Care Costs. Only eight of these original fourteen remain open, 43% have received closure. The Bureau continues to review its overall management of Health Services as well as the Advisory and Assistance report from the National Academy of Public Administration (NAPA) to streamline Health Services Operations in

the Bureau. As part of this review, effective April 1, 2021, the Bureau has realigned its Regional Health Services Administrators nationwide to improve accountability, and enhance coordination and communication on all health service initiatives across the agency.

Since its inception, several additional audits have been initiated or published by both GAO and OIG, including a priority GAO audit regarding Bureau's staffing challenges and Employee Wellness Program. As a result, the Task Force has expanded its efforts to review and assist with these additional audits and recommendations. Through this work, several additional recommendations have been closed as implemented, including most recently, one of the two Bureau recommendations regarding pregnant women in Department custody. GAO specifically indicated in its closure notice that the Bureau successfully developed and implemented a policy to identify and collect data on postpartum individuals during intake to better position itself to ensure staff have the information they need to provide appropriate postpartum care. GAO has also communicated over the past six months that the Bureau has made positive strides in its responsiveness to GAO audit recommendations and that it has closed out all recommendations pre-dating calendar year 2020. The Bureau also continues to address, resolve, and close recommendations made by the Department of Justice Office of Inspector General via formal audits and informal Management Advisory Memos.

We are also engaging external organizations to assist us in assessing our operations across a range of areas to further these goals. As was mentioned earlier, the Bureau has contracted with an outside firm to, among other tasks, assist in developing and implementing a reliable method for calculating staffing levels and assist with analyzing data to help identify and address the causes and potential impacts of staffing challenges on staff and inmates. The contract is well underway and this past January, Bureau officials met with the contractor concerning the development of a tool that will assist agency in calculating optimal staffing levels for its various locations. We are also partnering with other organizations to assist in aggregating and analyzing data to assess FSA implementation goals. We will be looking at developing a stronger data analytics effort to intensify monitoring and evaluation of programs and spending.

Reducing Criminal Activity Within Our Agency

The Bureau is committed to eradicating all criminal activity and unethical behavior in the agency. With regard to illegal activities, BOP policy, specifically the Program Statement 3420.011, Standards of Employee Conduct (PS 3420). The policy is found at: https://www.bop.gov/policy/progstat/3420_011.pdf and provides that employees are to obey not only the letter of the law, but the spirit, when engaged in personal or official activities. Misconduct allegations are referred for investigation under Program Statement 1210.024, Office of Internal Affairs (OIA) (https://www.bop.gov/policy/progstat/1210_024.pdf). OIA reports violations and allegations of violations of staff misconduct per the Standards of Employee Conduct, including criminal matters, to the U.S. Department of Justice, Office of the Inspector General (OIG).

All staff are subject to discipline for failing to follow operational policy guidance and the ethical guidance provided in PS 3240. Specifically, the Program Statement explicitly states that “it does not and cannot specify every incident that would violate the Standards of Conduct. In general, the Bureau expects its employees to conduct themselves in such a manner that their activities both on and off duty do not discredit the agency.” Among the specific prohibitions provided are illegal drugs; inappropriate use of alcohol; emotional, physical, sexual, or financial involvement with inmates; providing an inmate or inmate’s associate anything not authorized in the performance of staff duties; the use of force beyond that reasonably necessary to subdue an inmate; and any behavior that would be demeaning to inmates, fellow employees, or others. The Program Statement also discusses prohibitions on the introduction of contraband, the requirement to participate fully in an authorized investigation, and a general prohibition of illegal activities, among other matters.

Reporting Misconduct

Staff members, pursuant to PS 3420, are under an obligation to report misconduct. Failure to report allegations of misconduct is itself misconduct, although Wardens are trained to clarify when matters may be better addressed as performance issues in the first instance (e.g., an inadvertent failure to follow policy, a late arrival) as a discretionary matter. Misconduct allegations are also received from other sources including the Union, inmates, the public, OIG, and other law enforcement agencies, and if uncovered during review processes described above. There is no limitation to who may submit allegations. Because allegations can and do come from varied sources, many allegations are reported more than once. The vast majority of investigations conducted by DOJ OIG of Bureau staff misconduct result from referrals from BOP.

The nature and complexity of the allegations, among other factors, will determine which office will investigate an allegation, but criminal investigations are investigated by the OIG, and serious administrative investigations, including those involving Wardens, are investigated by BOP Office of Internal Affairs (OIA). If allegations are sustained by OIG, that office will work with local U.S. Attorney’s Offices for criminal prosecution, or refer the case back to BOP for administrative action.

The Bureau has a robust infrastructure to educate and train staff as to prohibited actions and to advise all persons (staff, inmates and the public) as to how to report misconduct. The agency emphasizes accountability and cooperation with the DOJ OIG.

Inmate Misconduct – Contraband Interdiction

The Bureau, like most correctional systems, continues to combat the threat of contraband introduction into our prisons, particularly introduction via the use of Unmanned Aircraft Systems (UAS). During FY2021, there have been over 116 documented UAS sightings and over 6 UAS

recovered by BOP staff. The security threat of UAS to Federal prisons remains high and expanding. The Bureau has leveraged available mitigation strategies to address this threat.

All BOP correctional facilities are subject to UAS specific flight restrictions issued by the Federal Aviation Administration (FAA) per 14 CFR 99.7. We continue to investigate suspected violations of the national defense airspace (49 USC 46307) over our federal prisons, in some cases for purposes of introducing illegal, dangerous contraband in violation of 18 USC 1791. Some of the most recent UAS security breaches introduced dangerous contraband including large amounts of drugs, cellphones, and, in one instance, escape paraphernalia.

In Fall 2020, the Bureau conducted a comprehensive test of UAS detection and Counter-Unmanned Aircraft Systems (CUAS) technology in collaboration with several DOJ components, elements of the Department of Defense and the Intelligence Community, and other federal law enforcement partners. The test was coordinated with the FAA, FCC, and NTIA. The Bureau plans to deploy UAS detection technology based on the results of those tests and appreciates the continued support of Congress to protect Federal prisons.

Conclusion

As the Subcommittee recognizes, the Bureau's mission is complex but with appropriate support, the agency can effectively reintegrate individuals back into the community following release from prison to reduce the likelihood of future criminal behavior and associated victimization. The Bureau's recidivism rate is lower than that found in most studies of state prisons using comparable definitions and methodologies.¹ And with the ongoing implementation of the FSA, the Bureau seeks to improve these outcomes. Despite the challenges affecting our nation and agency, the agency's efforts to carry out its mission are a testament to the hard work of our dedicated professional staff who support public safety and promote reentry.

Chairwoman Jackson Lee, Ranking Member Biggs, and Members of the Subcommittee, I am honored to speak on behalf of the Bureau, its staff in our institutions, and our administrative offices nationwide. Our mission is extremely challenging, but critical to the safety and security of the public, our staff, and the inmates in our facilities. I thank you for the opportunity to speak with you today, and for your support as we move forward successfully in these critical priority areas.

This concludes my formal statement.

¹ An estimated 68% of prisoners released from 30 state prisons were arrested within 3 years. Source: BJS, Office of Justice Programs "2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005-2014)" May 2019. The BOP's 2018 Second Chance Act study (of inmates released FY 2011-13) shows that approximately 45% were re-arrested or had their supervision revoked over a three-year period; see also U.S. Sentencing Commission, *Recidivism Among Federal Offenders: A Comprehensive Overview*, 16 (Mar. 2016), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism_overview.pdf (finding that 33.7% of federal offenders recidivated within three years of release [Table 2]) and US Sentencing Commission: *Recidivism of Federal Offenders Released in 2010*, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20210930_Recidivism.pdf (finding that 35.4% of federal offenders recidivated within three years of release [Figure 9]).